

Upholding Indigenous Peoples rights and supporting traditional knowledge

Summary

National reports show that Parties have barely implemented the Programme of Work on Article 8(j) and Related Provisions, underlining a need to mainstream support for Indigenous Peoples and local communities in CBD national implementation. Yet CBD implementation would fail without the full and effective participation of Indigenous Peoples and local communities, who live with, manage and nurture biodiversity in forests, drylands, mountains and other ecosystems. Their customary rights to land, territories and resources must be upheld. Parties must take legislative, policy and administrative measures to give effect to their commitments to promote traditional knowledge, while protecting the rights of Indigenous Peoples and local communities in the national implementation of the CBD's Strategic Plan and post-2010 Biodiversity Targets.

A new work programme to enhance customary resource management and sustainable use must be adopted. CBD implementation, including any expansion of Protected Areas, as well as Access and Benefit-sharing arising from the utilization of Genetic Resources and Associated Traditional Knowledge, requires the free, prior, informed consent of the relevant Indigenous Peoples and local communities, and must be consistent with the UN Declaration on the Rights of Indigenous Peoples.

What is at stake?

A crisis of biological and cultural diversity

The integral links between biological and cultural diversity that are central to the customary ways of life of Indigenous Peoples and local communities are becoming increasingly well-documented and understood by policy-makers and practitioners alike. However, pressures ranging from expansion of industrial agriculture, extractive industries, and climate change to urban migration and sedentarisation are having a profoundly negative effect on both biological and cultural diversity.

What is the CBD doing about it?

The CBD explicitly recognizes the role of “indigenous and local communities” in conserving and sustainably using biodiversity, and obliges States to ensure the in situ conservation of the traditional knowledge, innovations, and practices of these communities (Article 8(j)) and to protect and encourage the traditional cultural practices underpinning the customary use of biological resources (Article 10(c)). In doing so, the CBD makes an explicit link between Indigenous Peoples and local communities and the conservation and sustainable use of biodiversity.

The task of articulating and operationalising the rights of Indigenous Peoples and local communities is primarily undertaken by the WG8(j). The WG8(j) is eliciting resolutions and guidelines that are gradually creating a discourse of community rights to their territories, biodiversity, and ways of life. The Akwé: Kon Guidelines on the conduct of social, cultural and environmental impact assessments on developments on the lands of Indigenous Peoples and local communities, as well as the draft Tkarihwaí:ri Ethical Code of Conduct for respecting the cultural and intellectual heritage of Indigenous Peoples and local communities, are prime examples of the emerging discourse on community rights within the CBD.

The WGABS is currently negotiating the International Protocol on Access and Benefit Sharing, which is expected to be adopted at COP 10. While there are still some major outstanding issues, there is a general agreement that Indigenous Peoples and local communities have rights over their knowledge, innovations and practices.¹ Some Parties' domestic legislation also recognize the rights of communities over genetic resources and to give or withhold consent to any use of such knowledge by research or business and the right to share in any benefits that could accrue from the commercial and other utilization of their knowledge.

1 - The traditional knowledge referred to here is 'traditional knowledge associated with genetic resources' which is the dominant interpretation by State Parties of the term 'knowledge, innovations and practices' referred to in Article 8(j) of the CBD.

The WG8(j) and WGABS, among other processes under the CBD, establish strong links between the rights of Indigenous Peoples and local communities to their traditional knowledge and their rights to their lands, ways of life, and natural resources. Procedural and substantive rights such as the right to free, prior and informed consent (FPIC) are increasingly referenced in CBD negotiations, in mutually reinforcing international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples, and in precedent-setting case law rulings such as the recent Endorois Case in Kenya. In doing so, these rights are becoming emerging principles of customary international law.

Information on Briefing Papers

These briefings – the Top 10 Issues for COP 10 - were developed by representatives of civil society and Indigenous Peoples' organizations, facilitated by the CBD Alliance. It should not be understood as representing the position of the CBD Alliance nor civil society in general. Rather it is meant to provide background and current information, as well as some viewpoints on key issues for COP 10. The viewpoints represented in this paper are those of its contributors. As the space for the printed briefings was limited, please find the full-length (referenced) papers, at Undercover COP (www.undercovercop.org)

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Undercovercop is your portal to civil society views and analysis of the CBD negotiations, and will feature up to the minute breaking news and civil society analysis during COP 10. At UndercoverCOP you can download the ECO, the daily newsletter published by the civil society community that cuts right through the bureaucratic United Nations language to the issues and politics at hand, and read other updates and analysis.

On the ground media contacts in Nagoya

Those seeking an on-the-ground contact in Nagoya can find contacts for each issue at the end of each briefing page. Media can also contact the co-coordinator of the CBD Alliance, Jessica Dempsey, who can direct you to appropriate contacts and experts from all over the world. She can be reached on email [jdempsey@interchange.ubc.ca] any time or by phone in Nagoya: 080 5191-6947 (or from outside Japan ++81 080-5191-6947)

CBD Alliance

The Convention on Biological Diversity Alliance (CBD Alliance) is a network of activists and representatives from nongovernmental organizations (NGOs), community based organizations (CBOs), social movements and Indigenous Peoples' organizations (IPOs) advocating for improved and informed participation in Convention on Biological Diversity (CBD) processes.

Proposals for COP 10 and beyond

In Nagoya, Parties should:

- Adopt the Multi-year Programme of Work of WG8j, with a focus on Implementation of Article 10c.
- Inclusion of Traditional Knowledge in the CBD Strategic Plan, post-2010 targets and Indicators Relevant for Indigenous Peoples.
- Ensure that the ABS protocol contains explicit recognition that: 1) Indigenous peoples and local communities have rights to determine access to and use of their genetic resources and associated traditional knowledge and these rights are recognized in international law and not entirely subject to national law; and 2) Parties to ensure that Indigenous peoples and local communities prior informed consent (PIC) and mutually agreed terms (MAT) can be enforced through effective compliance mechanisms and access to legal remedies.
- Adopt the draft Tkarihwaí:ri Ethical Code of Conduct and mandate the WG8(j) to further elaborate measures for implementation of the cross-cutting theme of traditional knowledge, innovations, and practices.
- Ensure that the draft joint programme between the CBD and UNESCO fully represents the rights and principles enshrined within Articles 8(j) and 10(c), the Tkarihwaí:ri Ethical Code, and other international instruments such as the UN Declaration on the Rights of Indigenous Peoples.
- Ensure that all negotiations and workshops include Indigenous Peoples and local communities, including establishing National Focal Points to facilitate communications with Indigenous Peoples and local communities, and give special consideration when developing communication, education and public awareness tools.

Further information

International Indigenous Forum on Biodiversity (IIFB): www.iifb.net

Forest Peoples Programme (FPP): www.forestpeoples.org

Natural Justice: www.naturaljustice.org

Third World Network (TWN): www.twinside.org.sg

Contacts at COP 10

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